

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

VARILEASE FINANCE, INC., and
VFI KR SPE I LLC,

Plaintiffs,

v.

EARTHCOLOR, INC., MEDIA
PRINTING CORPORATION, EC
HOLDCO, INC. EC SUBCO, INC.,
BARTON PRESS, INC., CEDAR
GRAPHICS, INC., EARTH COLOR
HOUSTON, INC., EARTH COLOR NEW
YORK, INC., EARTH THEBAULT INC.,
INTERNATIONAL COLOR SERVICES,
INC., EARTHCOLOR GROUP, LLC,
MITTERA EAST, LLC, MITTERA
FLORIDA, LLC, MITTERA GROUP,
INC., MITTERA NEW JERSEY, LLC,
MITTERA NEW YORK, LLC, and
MITTERA HOUSTON, LLC.

Defendants.

Case No. _____

DEFENDANTS' NOTICE OF REMOVAL

COMES NOW Defendants Mittera East, LLC, Mittera Florida, LLC, Mittera New Jersey, LLC, Mittera New York, LLC, and Mittera Houston, LLC (together, the “Recently-Added Parties”), along with all defendants in the above-captioned civil action, by and through their respective attorneys, and hereby remove the action from the Circuit Court in and for Oakland County, Michigan, Case No. 2018-162879-CB, to the United States District Court for the Eastern District of Michigan, Southern Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and

Federal Rule of Civil Procedure 81. As grounds for removal, the Recently Added Parties state as follows:

1. Plaintiffs Varilease Finance, Inc. and VFI KR SPE I LLC filed their Summons and Complaint on January 3, 2018, in the Circuit Court in and for Oakland County, Michigan, Case No. 2018-162879-CB against EarthColor, Inc., Media Printing Corporation, EC Holdco, Inc., EC Subco, Inc., Barton Press, Inc., Cedar Graphics, Inc., Earth Color Houston, Inc., Earth Color New York, Inc., Earth Thebault, Inc., International Color Services, Inc., EarthColor Group, LLC, and Mittera Group, Inc. (Ex. B).

2. The Recently-Added Parties were not listed as parties on the Summons and Complaint.

3. On March 30, 2018, Plaintiffs filed their First Amended Complaint in Case No. 2018-162879-CB in the Circuit Court for Oakland County, Michigan, adding the Recently-Added Parties as Defendants. (Ex. D). The Recently-Added Parties were served on April 6, 2018. (Ex. E).

4. Plaintiffs' First Amended Complaint includes ten counts: (1) breach of contract claims against certain defendants as co-parties to a Master Lease Agreement dated May 16, 2013; (2) breach of contract claims against certain defendants as guarantors of the Master Lease Agreement; (3) breach of contract claims against certain defendants as alleged successors to the Plaintiffs' co-parties to the Master Lease Agreement; (4) breach of contract claims against certain defendants as alleged successors of the Guarantors of the Master Lease Agreement; (5) common law conversion claims against certain defendants; (6) statutory conversion claims, pursuant to MCL § 600.2919a(1)(a) ; (7) a claim for specific performance against all defendants; (8) a

foreclosure claim against EarthColor, Inc.; (9) a foreclosure claim against Media Printing Corporation; and (10) a foreclosure claim against certain Defendants. (Ex. D, ¶ 24).

5. Defendants may remove state court civil actions, over which federal district courts have original jurisdiction, to the federal district court “embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

6. Federal district courts have original jurisdiction over civil actions between citizens of different states where the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a).

7. The above-captioned action is between citizens of different states.

a. Plaintiff Varilease Finance, Inc. is a Michigan corporation with its principal place of business in Salt Lake City, Utah. Plaintiff VFI KR SPE I LLC is a Delaware limited liability company, and upon information and belief, its managing member is Varilease Finance, Inc. (Ex. D, ¶¶ 1-2; Slaughter Affidavit in Support of Notice of Removal (“Ex. A.”), ¶ 5).

b. Upon information and belief, none of the defendants are residents of Michigan or Utah; there is complete diversity in this case, and the forum-state defendant exception to removal is inapplicable. *See* 28 U.S.C. 1441(b)(2).

i. Defendant EarthColor, Inc. is a Delaware corporation with its principal place of business in Morris County, New Jersey. (Ex. D, ¶ 3).

ii. Defendant Media Printing Corporation is a Florida corporation with its principal place of business in Broward County, Florida. (Ex. D, ¶ 4).

iii. Defendant EC Holdco, Inc. is a Delaware corporation with its principal place of business in Morris County, New Jersey. (Ex. D, ¶ 5).

iv. Defendant EC Subco, Inc. is a Delaware corporation with its principal place of business in Morris County, New Jersey. (Ex. D, ¶ 6).

v. Barton Press, Inc. is a Delaware corporation with its principal place of business in Morris County, New Jersey. (Ex. D, ¶ 7).

vi. Cedar Graphics, Inc. is a New York corporation with its principal place of business in Suffolk County, New York. (Ex. D, ¶ 8).

vii. Earth Color Houston, Inc. is a Delaware corporation with its principal place of business in Harris County, Texas. (Ex. D, ¶ 9).

viii. Earth Color New York, Inc. is a New York corporation with its principal place of business in Morris County, New Jersey. (Ex. D, ¶ 10).

ix. Earth Thebault Inc. is a New Jersey corporation with its principal place of business in Morris County, New Jersey. (Ex. D, ¶ 11).

x. International Color Services Inc. is a Delaware corporation with its principal place of business in Maricopa County, Arizona. (Ex. D, ¶ 12).

xi. EarthColor Group, LLC is a Delaware limited liability company, and upon information and belief, none of its members is domiciled in Michigan or Utah. (Ex. D, ¶ 13; Ex. A, ¶ 4).

xii. Mittera East, LLC is an Iowa limited liability company, and its sole member is Mittera Group, Inc., an Iowa corporation with its principal place of business in Des Moines, Iowa. (Ex. D, ¶ 14; Ex. A, ¶ 3; Ex. F, Warner Affidavit, ¶¶ 3-4).

xiii. Mittera Florida, LLC is an Iowa limited liability company, and its sole member is Mittera East, LLC. Mittera East, LLC is an Iowa limited liability company, and its sole member is Mittera Group, Inc., an Iowa corporation with its principal place of business in Des Moines, Iowa. (Ex. D, ¶ 15; Ex. A, ¶ 3; Ex. F, Warner Affidavit, ¶¶ 3-4).

xiv. Mittera Group, Inc. is an Iowa corporation with its principal place of business in Des Moines, Iowa. (Ex. D, ¶ 16; Ex. A, ¶ 3; Ex. F, Warner Affidavit, ¶¶ 2-3).

xv. Mittera New Jersey, LLC is an Iowa limited liability company, and its sole member is Mittera East, LLC. Mittera East, LLC is an Iowa limited liability company, and its sole member is Mittera Group, Inc., an Iowa corporation with its principal place of business in Des Moines, Iowa. (Ex. D, ¶ 17; Ex. A, ¶ 3; Ex. F, Warner Affidavit, ¶¶ 3-4).

xvi. Mittera New York, LLC is an Iowa limited liability company, and its sole member is Mittera East, LLC. Mittera East, LLC is an Iowa limited liability company, and its sole member is Mittera Group, Inc., an Iowa corporation with its principal place of business in Des Moines, Iowa. (Ex. D, ¶ 18; Ex. A, ¶ 3; Ex. F, Warner Affidavit, ¶¶ 3-4).

xvii. Mittera Houston, LLC is an Iowa limited liability company, and its sole member is Mittera East, LLC. Mittera East, LLC is an Iowa limited liability company, and its sole member is Mittera Group, Inc., an Iowa corporation with its principal place of business in Des Moines, Iowa. (Ex. D, ¶ 19; Ex. A, ¶ 3; Ex. F, Warner Affidavit, ¶¶ 3-4).

8. The amount in controversy of the above-captioned action exceeds \$75,000 exclusive of interests and costs. For each of their breach of contract claims in Case No. 2018-162879, Plaintiffs seek damages in the amount of at least \$2,546,098.26, and Plaintiffs seek damages on their statutory conversion claim in excess of \$6.9 million. (Ex. D, ¶¶ 95, 101, 105, 109, 123).

9. Based on Paragraphs 6, 7, and 8 above, this Court has original jurisdiction over the above-captioned action pursuant to 28 U.S.C. § 1332(a), and venue is proper in this Court, since this is the court for the district and division embracing the place in which the state court action was pending. 28 U.S.C. § 1441(a).

10. Pursuant to 28 U.S.C. § 1446(b) and *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999), the Recently-Added Parties have timely removed this action, because this Notice of Removal is filed within 30 days after the Recently-Added Parties were served. (Ex. E). The Recently-Added Parties, and Mitterra Group, Inc. object to the exercise of personal jurisdiction over them in the state of Michigan and do not waive their objection by filing with this Notice. *Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 409 (1929) (“Petitioner suggests that, by removal of the case to federal court, objection to jurisdiction over the person of respondent was waived. Our decisions are to the contrary.”).

11. All of the procedural requirements necessary to obtain a removal of Case No. 2018-162879-CB to this Court, pursuant to 28 U.S.C. § 1446, have been satisfied: (1) this Notice of Removal is accompanied by copies of all process, pleadings, and orders served upon defendants in Case No. 2018-162879-CB, 28 U.S.C. § 1446(a); (2) all Defendants have joined this Notice of Removal and consent to removing the above-captioned case to this Court, *id.* at § 1446(b)(2)(A); and (3) upon filing this Notice of Removal, the Recently-Added Parties will give written notice thereof to Plaintiffs counsel and will file an informative motion together with a copy of this Notice of Removal with the Circuit Court in and for Oakland County, Michigan, *id.* at § 1446(d); (Ex. J).

WHEREFORE, the Recently-Added Parties, along with the above-captioned defendants, give notice that the above-captioned action is removed to this Court from the Circuit Court in and for Oakland County, Michigan.

Dated: May 2, 2018

Respectfully submitted,

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